

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Date: May 31, 2018

Judge: Hon. James Donato

Time: 39 Minutes

Case No. **C-16-00036-JD**

Case Name: **McLellan et al v. Fitbit, Inc.**

Attorney(s) for Plaintiff(s): Jonathan Selbin/Kevin Budner/Robert Klonoff

Attorney(s) for Defendant(s): William Stern/Kai Bartolomeo/Erin Bosman

Deputy Clerk: Lisa R. Clark

Court Reporter: Lydia Zinn

PROCEEDINGS

Motion to Dismiss - Held

Motion to Strike - Held

NOTES AND ORDERS

By **June 14, 2018**, plaintiff's counsel will file a statement detailing the timeline, events, and facts surrounding McLellan's arbitration request and its apparent failure to move forward. Fitbit may respond by **June 28, 2018**. The filings should specifically discuss whether the Court's referral of arbitrability issues to the arbitrator is being followed, and if not, why not. The Court may call for additional briefing or schedule other proceedings after reviewing the submissions.

The motion to strike class allegations for non-opt-out consumers is granted without prejudice and is subject to reconsideration if warranted by future developments. Plaintiff will file a Third Amended Complaint by **June 21, 2018**. The amended complaint will include additional allegations about Fitbit's product packaging and plaintiff's reliance on that packaging.

The remainder of the motion to dismiss is taken under submission. An order will be filed.